

EEO programs at smaller stations served no purpose because such stations have no formal personnel procedures and the statistics were unreliable due to the small sample involved; (3) because the EEO programs served little purpose for small stations, the burden placed on those stations was unjustified; and (4) the great majority of industry employees were still covered by the regulations.

The court determined that the justifications for action were unsupported or inadequate. First, the court noted that the Commission had previously rejected the workload and small sample arguments, and offered no justification for altering this view. Second, the court held that the Commission's EEO rules as enforced at that time allowed stations great flexibility in determining the best method of ensuring effective EEO practices, and there was no record evidence to support the contention that they were burdensome. Third, the court held that coverage of a majority of employees cannot in itself be a reason for policy change.

The situation has changed dramatically since that time. Commission staffing has changed, and demand on Commission resources has increased. Moreover, the Commission now requires stations to maintain records for each job opening concerning the sources that were contacted, the number of minorities and women in each applicant and interviewee pool, the number of referrals from each source, whether an individual applicant was offered a job and whether an offer was accepted. Although there is flexibility in how stations keep these types of records, the maintenance of these records have become a necessity. This is a highly burdensome system for all stations, particularly those with few financial and personnel resources. The record in this proceeding and in the *Notice of Inquiry* will provide the Commission with more than adequate justification for changing its rules. The Commission may move boldly forward in this

proceeding, without fear of the *UCC* decision, by raising the reporting threshold to 20 fulltime employees. We strongly urge the Commission to do so.

**B. Raising the Minority-Based Threshold Would Relieve a Regulatory Burden from Many Stations Without Compromising the Integrity of the Commission's EEO Mission.**

In addition, NAB recommends that the Commission raise the threshold for written EEO programs for such broadcasters from the current five percent of aggregate minorities in the labor force to ten percent. As we noted in our Comments to the *Notice of Inquiry*,<sup>31</sup> in many markets, less than ten percent minority representation in the labor force translates into an incredibly small available minority labor force.

NAB, therefore, urges the Commission to raise the threshold for having a written program for minorities, from the current five percent minorities in the labor force to ten percent. Raising the threshold would have little effect on the Commission's EEO mission, but would provide regulatory relief for many broadcasters who have difficulties attracting minorities due to their absence in the local labor force. NAB's examination of the Commission's 1995 broadcast employment report shows that currently approximately 377 stations that are subject to the annual reporting requirement are licensed to areas whose labor force contains less than five percent minorities in the aggregate. There are 9,813 employees at these stations, accounting for approximately 6.4% of all broadcast employees at stations subject to the reporting requirements. Raising the bar to ten percent would add approximately 506 stations that employ 15,848 people, which would bring the total number of employees affected to 25,661 (approximately 16.8%). Thus, by raising the threshold to ten percent, the Commission would more than double the

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<sup>31</sup> Comments of NAB, *supra* note 14, at 17-18.

number of stations exempt from the reporting requirement, but still maintain data on stations that employ over 83 percent of broadcast employees.

Raising the threshold can relieve the regulatory burden from many stations while maintaining the integrity of the Commission's EEO rules. NAB urges the Commission to raise the threshold to ten percent.

**IX. SMALL MARKET STATIONS THAT HAVE NO HISTORY OF DISCRIMINATION SHOULD BE EXEMPT FROM SCRUTINY.**

NAB recommends that the Commission adopt a "small market" definition similar to that provided under the statute exempting a station serving primarily rural areas from paying overtime to its announcers, newspeople and chief engineer.<sup>32</sup> This statute provides the overtime exemption for stations whose main studio is located (a) outside a Metropolitan Statistical Area ("MSA"), (b) inside an MSA of less than 100,000 population, or (c) in a community of less than 25,000 population and at least 40 miles from the principal city of the MSA. These areas often lack the types of amenities which would attract applicants from other locales, generally have a small local labor force from which stations may recruit, and are likely to have little, if any, public transportation which would allow employees and applicants to commute great distances in order to reach the station.

There is no question that small market broadcasters have acute difficulties in attracting and retaining qualified women and minorities. As noted by Sunbrook Communications,<sup>33</sup> small market broadcasting is generally not a paying proposition for station

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<sup>32</sup> 29 U.S.C. § 213(b)(9).

<sup>33</sup> Comments of Sunbrook Communications, *supra* note 20, at 3-4.

owners or their employees. Furthermore, many small market broadcasters must compete with huge companies for workers — including women and minorities — in the general labor force.<sup>34</sup>

It is impossible for most small market broadcasters to offer the same wages and benefits available from these large, international corporations. For many applicants — particularly those who owe thousands of dollars in college loans — the low pay and sparse benefits associated with small market broadcasting are not attractive. In addition, because small market jobs of all types are considered “entry level,” it is often more difficult for small market broadcasters to attract personnel from larger markets, even for management positions. The natural tendency in career advancement is to begin in small markets and move up to larger markets, not vice versa.<sup>35</sup>

The Commission should provide these stations with relief by not scrutinizing their recruitment efforts so long as the stations have no history of discrimination. For these stations in particular, formalized efforts should be secondary. By relieving such stations of overly burdensome recordkeeping requirements, the Commission would allow them to devote more resources to serving the public through their programming.

## **X. CONCLUSION**

In the two most recent proceedings on EEO — the *Notice of Inquiry* and the instant proceeding — the Commission has been presented with sufficient evidence of the burdens that the current EEO enforcement regime places on broadcasters. Moreover, through its contacts with broadcasters, the Commission is well aware that broadcasters are willing to comply with its EEO regulations. The problem with the current efforts-based system of enforcement is that it is

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<sup>34</sup> See Comments of Earshot Broadcasting, Inc. in MM Docket No. 94-34, filed May 23, 1994, at 3.

<sup>35</sup> See Comments of La Paz Broadcasting, Inc. in MM Docket No. 94-34, filed May 17, 1994, at 5.

cumbersome, ill-defined and dehumanizing. The time has come for the Commission to act in a positive manner on EEO compliance. By adopting NAB's proposal on compliance — as well as raising the reporting thresholds and providing small market relief — the Commission would make its EEO enforcement much more workable. We urge the Commission to adopt our proposals.

Respectfully submitted,

NATIONAL ASSOCIATION OF  
BROADCASTERS  
1771 N Street, N.W.  
Washington, D.C. 20036



Henry L. Baumann



Steven A. Bookshester



Terry L. Etter

Counsel

Dwight Ellis  
Vice President, NAB Human Resource Development

Anandashankar Mazamdar  
Jason Kerben  
NAB Legal Interns

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## **APPENDIX**

### **STATE BROADCAST ASSOCIATION REPORT ON EEO/DIVERSITY PROGRAMS**

## STATE BROADCAST ASSOCIATION REPORT ON EEO/DIVERSITY PROGRAMS

ALASKA - Publishes a comprehensive women and minority referral guide. This guide lists various organizations that work with and for women and minorities in Alaska and stations are encouraged to notify the various organizations as jobs at the stations become available.

ALABAMA - The Alabama broadcasters in the fall of 1995, in conjunction with a television station in Mobile and a radio station in Montgomery, participated in an Alabama State University career fair/job expo. The University is Alabama's largest Black college. The objectives of the job fair were to provide an opportunity for juniors and seniors as well as alumni to meet and interact with various agencies, businesses and industries. ABA has contacted every major black college in the state advising them that the association serves as a clearing house for minority employment in broadcasting. Its monthly "Job Bank" actively solicits resumes from minority applicants. ABA's May 1996 Newsletter prominently mentions that associate member Alabama Minority Supplier Development Council, Inc. is a major minority recruiting source. ABA is currently in the planning stage with Dwight Ellis of NAB for a joint NAB/ABA Career Fair to be held in the Fall of 1996 at either the University of Alabama in Tuscaloosa or the University of Alabama in Birmingham.

ARIZONA - The Arizona broadcasters in cooperation with the Department of Media Arts at the University of Arizona sponsors a media workshop for minority high school students. The workshop is designed to introduce sophomores and juniors to career options and electronic media. The workshop lasts for five days and students are housed on the campus of the University of Arizona. The cost per student is \$50 and all other costs, meals, housing and supplies are underwritten by the broadcasters. Workshop sessions include: careers in broadcasting, media performance, media writing, college orientation and scholarship opportunities. The program is designed for 26 students and is held in early summer.

ARKANSAS - The Arkansas Broadcasters Association is involved in several programs. They are involved in job fairs at state universities; stations are holding job fairs in their local communities, and the association is planning an intern program. They have a scholarship program with the majority of scholarships going to minority students. The ABA office serves as an employment consulting resource for students and broadcasters.

CONNECTICUT - The Connecticut Broadcasters Association established an EEO Committee with the CBA Board of Directors. The Committee and the President regularly remind the Members of their EEO responsibilities. In 1995 a Broadcasting Job Fair was held at the San Juan Center in Hartford, Conn. The Fair was open to anyone interested in applying for a job in the radio or television industry. Minority and female applicants were especially welcomed. All participants were required to complete a standard NAB

job application form before participating in the Fair. Fifteen radio and television stations had representatives present to talk with participants. The broadcasters present represented all job categories including programming, engineering, technical, audio/video production, sales, marketing, promotion, management, traffic, clerical, and news. The Fair was attended by at least 350 persons — 311 participants filled out the forms provided — 126 females and 185 males. The resumes obtained were made available to any station requesting the information. Consideration is being given to establishing a central job “clearinghouse” within CBA management structure.

GEORGIA - The Georgia Association of Broadcasters publishes, for its members, a comprehensive list of minority and women referrals. This list includes educational institutions and organizations that work with and for these groups. GAB also has a Job Bank service which lists all openings for job opportunities in the state and provides to stations a list of all applicants that have applied for the Job Bank Service through GAB. GAB provides job openings distribution lists to colleges and universities in the state for potential graduates.

ILLINOIS - Seven years ago, the IBC set in motion a Minority Intern Program with many of the state’s public and private universities. The IBC’s initial step was to set up a separate 501(c)(3) corporation and then fund the program, which runs about \$40,000 per year. After funding was completed, the IBC hired a retired college professor with a broadcasting background to coordinate the program. A meeting with the colleges asking their cooperation was the next step. Each year, three times a year or each semester, students are interviewed on campus and the top four are selected for the program. Their particular area of interest is matched with a station that can give them the proper work responsibility and the minority student is placed with the station for 16 weeks and given a grant by the association to pay for their lodging, food, etc. Each student receives \$3,000 for their 16-week internship. Summer interns, because the semester is shorter, receive a smaller grant. The IBC publishes a minority intern newsletter after each semester featuring the names of each student and a resume of their college career and internship. The IBC also retains the names of those students who do not make the internship and these names are also made available to the state’s broadcasters. The IBC is also working on a new program to try to get minority training for engineering and technical jobs through the state’s vocational high schools and a junior college giving a two-year degree in broadcast engineering. In addition, Southern Illinois University is planning to give a four-year broadcast engineering degree. The Association holds four college seminars each year at various universities with broadcast degree programs, bringing a traveling road show with broadcasters from news, sales, programming and production. The panel is diverse and features women and minorities. The program concludes with a session on how to get their first job in broadcasting.

IOWA - The Iowa Broadcasters Association maintains an EEO database and monthly distributes information on career opportunities in broadcasting. The database is made up of broadcast education programs and placement offices of state Job Service and community based organizations specifically serving women and minorities. IBA



maintains a running list of job seekers and a Job Bank listing that is published monthly and distributed bi-monthly in the IBA newsletter. The IBA office serves as an employment clearinghouse and consulting resource for students and broadcasters seeking employment in the state of Iowa. IBA regularly conducts one-to-two hour EEO sessions for radio/TV station owners and general managers at both the Winter and Summer conventions. IBA updates stations on current EEO policies, regulations and recruitment efforts.

**KANSAS** - The KAB is involved in numerous programs to assist in EEO efforts. Through contributions from member stations, they provide scholarships for minority high school students to attend the University of Kansas' Journalism Institute/Broadcast Workshop, a week long institute held in June. The KAB and member stations contribute funding for the scholarships. Full scholarships are \$225. The students are exposed to all aspects of broadcasting -- sales, news, production and programming. KAB also makes available a list of about 300 referral sources for recruiting women and minorities. The KAB also sponsors two or three job fairs around the state, and has established an "Education Task Force" comprised of broadcasters and educators to recruit promising individuals, including minorities, to the broadcast profession.

**LOUISIANA** - The LAB asks broadcasters to commit to attending career days or job fairs at colleges and universities in their area, to collect resumes or applications from the minority students attending the fairs and to share these with other broadcasters to establish a pool of qualified minority applicants. The job fairs and pooling of resources were a result of a task force formed to deal with employee recruitment, with specific emphasis on minorities.

**MARYLAND/DC/DELAWARE** - MD/DC broadcasters established a Minority Career Day for the first time in 1995. The first one was so successful that they set up a second one to run in the fall. They also established an ambitious scholarship program and created new alliances with the urban league and colleges to make sure the scholarships get into the hands of the most qualified.

**MASSACHUSETTS** - has created an EEO source list.

**MICHIGAN** - The MAB held two broadcasting career fairs to target and recruit minority applicants. One was planning with the Grand Rapids urban league and the other with the Michigan State University's Minorities in Communication Arts and Sciences Mid-West Conference. For the past five years MAB has printed a monthly job bank newsletter which includes a growing list of minority organizations. The newsletter is also published on the Internet and in several national minority newsletters and reports. MAB held its third successful Career Fair in the Saginaw/Bay City/Flint area on March 23, 1996. MAB also participated in the NAB/BEA Career Fair in Las Vegas last April. Its next big project is the MAB EEO Resource Guide. This three ring binder will contain legal memos from MAB's Washington attorneys, FCC EEO forms and guidelines, and over 800 EEO resources in label format. We expect to have the Resource Guide done by mid-

summer. MAB will offer this free to members who participated in the Career Fairs and for a nominal cost to our other members. Another project MAB is working on for the fall is to coordinate, and possibly co-sponsor, the Blacks in Advertising Radio and Television annual career fair in Detroit

**MINNESOTA** - For several years the Minnesota Broadcasters Association printed "jobs available" in its monthly newsletter. Beginning in 1994, the MBA has sent out a monthly "Job Bank" newsletter to an average of 75 job seekers. A monthly supplement is sent to the job seekers, in-between the Job Bank mailings. The MBA mails the monthly Job Bank to a list of 217 placement offices and human resource departments, approximately 55 of them are minority based. The Job Bank is also mailed to all the MBA members, approximately 300. A total of 700 are distributed. MBA participated in the NAB/BADA Career Fair, April 14, 1996, in Las Vegas, NV. The MBA is planning to organize and participate in additional job fairs throughout the state of Minnesota and neighboring states.

**NEBRASKA** - This year, NBA distributed an EEO Recruitment Source List to all broadcast members. Its office maintains an active job file which includes both applicants and openings which we coordinate and attempt to match. NBA has established a sub-committee to study the possibilities for minority internships and is in the process of planning an expansion of broadcaster-college partnerships with the University of Nebraska system. An annual legal workshop is held at its convention which focuses on EEO rules and developments. The Foundation is in the process of raising funds with one of the main purposes being scholarships for minorities.

**NEW HAMPSHIRE** - NHAB places ads in broadcasting magazine requesting resumes of women and minorities. It has also created an EEO source list, a list of minority and women's organizations.

**NEW YORK** - The New York State Broadcasters Association is involved in many programs to promote and help our member stations with their EEO efforts. For the 18th consecutive year, the New York State Broadcasters Association and the New York State Division For Youth, have jointly sponsored an employment/training program to be offered by radio and television members of NYSBA to students. It is the intention of this program to provide participating students the opportunity to witness and experience "first hand" the operational procedures of a radio or television station. Now in its 18th year, the Nelson A. Rockefeller Intern Program sponsors 35 high school and college interns at member stations around the State. Two years ago, the NYSBA established an job bank for minorities and females. The job bank is utilized by all NYSBA members and its database currently has over 600 applicants. NYSAB has also placed ads in industry periodicals requesting resumes of minorities and females and is in the process of setting up a newsletter to be published for the EEO job bank which will be available on the Internet. An EEO source list has also been established for member use. In 1995, the NYSBA sponsored the first annual broadcast careers job fair in the Capital District. It was such a huge success that NYSAB joined forces with the local chapter of the NAACP

and held its second annual broadcast careers job fair this year. Other Job Fairs are planning around New York State in the coming months.

NEVADA - During the past two years, the NBA has sought to educate both our stations and the public on the importance of minority hiring here in Nevada. The President and CEO of the NBA has appeared on local as well as national television and radio promoting minority recruitment in Nevada. An NBA Job Bank has been developed that currently has over 400 potential applicants. The NBA is an active member in the Latin Chamber of Commerce as well as the Asian Chamber of Commerce, and both the Latin and Asian Chambers are members of the NBA. The NBA attends community programs, and sponsors programs for minority students. One of the most important programs that the NBA supports is a Summer Broadcasting Internship Program sponsored by the community-funded Black Radio station in Las Vegas — KCEP — for minority high school students. Devoted a newsletter to EEO issues. Has spoken to interns involved with the public stations internship program and has spoken about minority recruitment on radio and television.

NEW JERSEY - The NJBA sponsors job fairs throughout the state. Their efforts along this line have resulted in over 1,000 job applicants, approximately 50% of which are women and minorities. They have also prepared a video which summarizes how they do their job fairs.

NORTH CAROLINA -Student Workshops: In the past, NCAB has conducted three-hour regional workshops for college students, in particular those from historically minority institutions. During these workshops, NCAB presented a variety of broadcast professionals to talk directly with students about the “real world” of broadcasting. Positions featured included programming, sales, promotions, financial. These workshops were very successful, and plenty of question-and-answer time was built in for students to speak directly with the professionals. These workshops resulted from meetings initiated by NCAB with deans of North Carolina communications/broadcasting departments; the deans asked for NCAB’s help in giving students an opportunity to learn more about career options in the profession. Job Bank: For a number of years, the NCAB has maintained a Job Bank. The service is two-fold: member stations submit job openings and call in for requests of potential candidates; “subscribers” to the Job Bank are sent listings of the job openings and submit their resumes. In addition, NCAB sends the Job Bank to the career planning offices of many North Carolina colleges and universities, and in particular, has targeted historically minority institutions. In the past, NCAB has produced a 30-second spot for members to run promoting careers in broadcasting — the spot was targeted toward stations that have primarily minority listeners. The Association is currently in the process of producing a new spot for distribution. Career Fairs: Each year, NCAB’s volunteer members and staff attend four to five career fairs on college campuses. At that time, volunteers discuss various career options in broadcasting and also discuss internship opportunities. Job Bank listings are distributed to graduating seniors. Student resumes are collected and are distributed to members for internship or hiring possibilities. Scholarships: In the past, as the budget has allowed, NCAB has

offered two scholarships to college-bound minority students graduating from high school. The scholarships have been "need-based." Community Relations Committee: NCAB maintains an on-going Community Relations Committee, which has as one of its primary goals to focus on ways to enhance opportunities for minorities in broadcasting.

OHIO - The Ohio Association of Broadcasters (OAB) is involved in several programs across the state. It has conducted job fairs in conjunction with the RAB in most major markets in Ohio and will continue to do so until it covers the entire state. These job fairs, currently averaging about 500 attendees per market, will be a continuing program with the OAB because of their success. The OAB also acts as an employment counseling service for prospective new hires, students and broadcasters. All of the EEO programs the OAB is doing are paid for by the OAB through its NCSA funds and at no additional expense to the stations.

OKLAHOMA - The OAB compiled a list of over 125 recruitment sources and mailed to member stations. They hold a one-day seminar for college broadcasting students, followed by a career fair. Students must bring resume and are requested to complete form on sex and race for tracking purposes. Attend on-campus university business/marketing school career fairs to attract students to broadcasting and get across the message that there are job opportunities in broadcasting just like any other business. Developed with NAB assistance a system of 11 tracking forms for compliance with EEO requirements and mailed them to member stations. Surveyed stations on availability of internships in their facilities and provided a list of state internships to colleges and universities.

OREGON - The Oregon Association of Broadcasters asks its state broadcasters to attend job fairs at colleges and/or universities in their area, as well as encouraging them to attend commercial job fairs that are held from time-to-time in Portland and Eugene, to collect applications and resumes from minorities and women applicants. There is a *People Available* column published in each month's issue of the OAB newsletter in which it promotes hiring minorities and women. 1997 will see the first of at least one Job Fair to be held each year sponsored by OAB. The goal is to not only have broadcasters at the job fair, but also to gather names and information for a statewide Broadcasters Job Bank. The Job Bank will be available to all OAB members. The OAB Executive Director is scheduled to attend Job Fairs to begin building this "bank" of names. The OAB sponsors an EEO session at its Annual Fall Conference each year.

PENNSYLVANIA - The Pennsylvania Association of Broadcasters conducts four job fairs across the state and is planning one with NAB in November in Philadelphia. PAB refers resumes of minority and female applicants to stations, and attends career days to meet students. PAB issues EEO advisories and has held sessions on EEO at its Convention.

SOUTH CAROLINA - The South Carolina Broadcasters Association conducts an annual Career Conference bringing broadcasters together with students from all South Carolina

colleges, universities and technical centers which offer broadcast training. The students have the opportunity to learn about industry careers from successful broadcasters and SCBA has an introduction to the next generation of broadcasting professionals. Currently, SCBA maintains an informal job bank by collecting resumes from broadcasting job/career seekers and also collecting information on jobs available from member stations. Personnel and positions available are published in our monthly newsletter. SCBA is considering a statewide recruitment program to include a job bank database and corresponding publication.

TENNESSEE - As part of its Annual Conventions the Tennessee Association of Broadcasters has held EEO Management Sessions. At the University of Tennessee in Knoxville and Middle Tennessee State University in Murfreesboro, its convention included a session on career focus, counseling and EEO recruiting. The TAB co-sponsored with the Nashville Area Radio Association in Nashville and the University of Tennessee at Martin a Minority Job Fair. The TAB administers a job bank, intern program and scholarships; and participates with the Nashville Advertising Federation's annual career day.

TEXAS - The TAB maintains an EEO database and regularly disseminates information on recruitment activities and career opportunities in broadcasting. The database is comprised of broadcast education programs at state universities, placement offices at higher education institutions with significant women and minority enrollment plus churches and community-based organizations serving women and minorities. TAB also maintains a job bank published bi-weekly with access also by computer bulletin board. The TAB conducts two career fairs each year in major metro areas and is planning two additional fairs this fall. At its annual convention in San Antonio last year, TAB conducted a one-day career fair that attracted 1,200 additional job seekers - many of them minorities. TAB also has produced a brochure and video tape explaining their various functions and career opportunities in broadcasting.

UTAH - The UBA held its first job fair this year, working with members of the Governor's Ethnic Council and the NAACP. Using those groups' mailing lists, UBA mailed out 5,000 flyers inviting participation. The rest of their publicity campaign consisted of radio and television spots. The UBA is now trying to initiate a minority intern program.

VIRGINIA - The Virginia broadcasters attend job fairs at minority colleges, maintain a job bank, run newsletter advertising and provide lists of minority organizations to members.

WASHINGTON - WSAB holds an annual EEO session at their annual meeting. EEO workforce statistics and WSAB compliance review form is sent out annually. Newsletter articles on EEO related topics. WSAB provides scholarship awards giving out three scholarships with one of these designated for minorities or women. WSAB has compiled and published a Directory of Minority and Women Recruitment Sources. The WSAB

Job Bank and Resume Resource Center lists job openings at stations through the state and solicits resumes from job applicants through advertising in local, regional and national publications.

WEST VIRGINIA - WVBA is making available to their members a list of West Virginia minority organizations. They also maintain a running list of job seekers.

WISCONSIN - WBA conducts a student seminar and job fair, an annual meeting of college students and professional broadcasters with mailings made to minority affairs coordinators statewide to publicize event to minority students. The WBA surveys stations for contact suggestions; compiling results into a list of women's, minority and diversity organizations. This is then distributed to stations. WBA also publishes articles on EEO in its newsletter.

WYOMING - Wyoming broadcasters held a job fair at their 1995 summer convention. They faxed information to colleges, contacted job services and sent out news releases to publicize. They maintain a list of all people contacted about the job fair which is available to their member stations.